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Supreme Court of the United States

OCTOBER TERM—1939.

NOS. 73 AND 74

POSTAL STEAMSHIP CORPORATION,
Petitioner,

against

STEAMSHIP EL ISLEO, etc.;
SOUTHERN PACIFIC COMPANY,
Respondent.

POSTAL STEAMSHIP CORPORATION,
Petitioner,

against

SOUTHERN PACIFIC COMPANY,
Respondent.

PETITIONER'S REPLY BRIEF.

JOHN C. CRAWLEY
EARLE FARWELL
for the Petitioner.

BARRY, WAINWRIGHT, THACHER & SYMMERS,
72 Wall Street, New York City.

Post Printing Company, Inc., 80 Lafayette Street, New York, N. Y.

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POSTAL STEAMSHIP CORPORATION, Petitioner, AGAINST Steamship EL ISLEO, etc.; SOUTHERN PACIFIC COMPANY, Respondent.	No. 73
POSTAL STEAMSHIP CORPORATION, Petitioner, AGAINST SOUTHERN PACIFIC COMPANY, Respondent.	No. 74

PETITIONER'S REPLY BRIEF.

The fault of the Eastern Glade in failing to hold back in Curtis Bay Channel is admitted, and regardless of respondent's discursions the only question here is one of law,—the validity of the supervising inspectors' requirement that El Isleo *stop*, and reverse if necessary, when the Eastern Glade sounded her two-blast signal. Indisputably that signal was sounded a considerable time before the vessels were *in extremis*. Indisputably also the only reason El Isleo did not stop at that time was because her master persisted in his so-called right to "cross" the Eastern Glade's signal and go on at full speed until he reached buoy 8M, where collision was imminent (R. 22, 33).

Unless this court shall hold the inspectors' rules to be

void, El Isleo stands in the position of any other vessel that has breached a rule of navigation, and she can escape liability only by an affirmative showing that her infraction did not contribute, and could not have contributed, to the collision. No such showing is possible here, for the contrary actually appears, but the settled presumption alone would be enough.

> "This is a presumption which attends every fault connected with the management of the vessel, and every omission to comply with a statutory requirement, *or with any regulation deemed essential to good seamanship.* In The Pennsylvania, 19 Wall. 125, 136, it was said that 'in such a case the burden rests upon the ship of showing not merely that her fault might not have been one of the causes, or that it probably was not, but that it could not have been'." (Our italics.) *The Martello,* 153 U. S. 64, at p. 74. See also *Lie* v. *San Francisco & Portland S. S. Co.,* 243 U. S. 291 at 298; and *Belden* v. *Chase,* 150 U. S. 674 at 698.

That the inspectors' rules if not inconsistent with the statute are of equal authority with the statutory rules, admits of no doubt. Both are declared by Congress in the same Act to be "special rules duly made by local authority". (June 7, 1897, ch. 4, §§ 1, 2; 33 U. S. C. §§ 154, 157.)

Decisions Cited by Respondent.

In view of the number and variety of the reported cases cited in the respondent's brief, it has seemed advisable to list them alphabetically in the appendix to this brief, with a short comment on each case.

The Asserted Conflict.

Respondent's major contention seems to be that Article 21 of the Inland Rules *essentially* requires or permits the privileged vessel to maintain her course and speed until, in the opinion of her pilot, collision has become unavoidable by any action on the part of the burdened vessel alone.

Article 21 of the Inland Rules does not so provide, and it is clear that the asserted inference from the Article is not in any sense its exclusive corollary. So much is proved by the statutory Great Lakes Rules 20 and 26, the former identical with Article 21 of the Inland Rules and the latter, like Rules II and VII of the Supervising Inspectors, prohibiting cross-signals and requiring both vessels to check their speeds. (*Geo. W. Roby*, (C. C. A. 6th) 111 Fed. 601, 609; *The Choctaw*, (C. C. A. 6th) 270 Fed. 114, 120.)

In the same way, unless it shall be said that Rules 20 and 26 of the statutory Great Lakes Rules are inconsistent with each other, it must be granted that there is no inconsistency between the general provision of Article 21 and any specific regulation, whether by Congress or by the inspectors, that fixes a reasonable point at which the privileged vessel must take action to avoid collision.

It is not that the privileged vessel may be forced to yield her right of way, but that since her right of way does not, on any interpretation of Article 21, extend to the point of collision, it may be ended, consistently with that Article, at any earlier point where safety is ordinarily assured and beyond which the avoidance of collision is less predictible.

Nor is there anything in the inspectors' regulations that may be construed as granting a right of way to the burdened vessel. On the contrary the regulations require *both* vessels to stop, not the privileged vessel alone; and

for a failure to observe any of the provisions of the Inland Rules or of the inspectors' regulations an offending officer is liable to a penalty of fifty dollars and to the suspension or revocation of his license by the inspectors (33 U. S. C. § 158; 46 id. § 239).

To say, as respondent does (page 25), that the privileged vessel's compliance with the inspectors' regulations will "produce a timidity and feebleness of action", is to misapply a classical expression of this court's, and to ignore the precise situation to which the regulations are addressed. This court used the quoted words with reference to a situation in which the burdened vessel had given no signal or other indication of her purpose; never with reference to a situation in which the burdened vessel had given a two-blast signal of her intention to cross ahead (*The Delaware*, 161 U. S. 459, 469; *Wilson* v. *Pacific Mail S. S. Co.*, 276 U. S. 454). It is to the latter situation alone that the present regulations apply.

Respondent's Discussion of Facts.

The Eastern Glade's navigation was not contrary to her signals, as asserted on page 4 of respondent's brief. According to the Pilot Rules, "Two short blasts of the whistle signify intention to direct course to own port" (Government Pamphlet, top of page 19). (The statutory Inland Rules do not prescribe the signals for vessels on crossing courses.) El Isleo's officers were stout in their insistence that they could and did construe that two-blast signal *only* as announcing the Eastern Glade's intention to cross their bows (El Isleo master, R. 33; El Isleo pilot, R. 213, 214); and as El Isleo's master added, "That is what happened" (R. 33). *Respondent would slur the keynote*, for it was on receipt of the Eastern Glade's two-blast signal that the inspectors' rules required that El Isleo sound only the alarm, and that "both steam vessels

shall be stopped,* and backed if necessary, until signals for passing with safety are made and understood."

Respondent repeatedly asserts that El Isleo's signals did not mislead the Eastern Glade, and that the Eastern Glade, despite her two-blast signal, did not actually intend to cross El Isleo's bows but did so as a result of her master's "miscalculation". It would be a strange rule that was designed to render harmless a stated condition of danger, but which would apply only if the author of the stated condition testified after the event that he had actually *intended* it to be dangerous. The whole purpose of the present rule is to prevent speculation on the part of the privileged vessel either as to the correctness of the burdened vessel's calculations or as to the propriety of her intent, once she has sounded a two-blast signal.

Respondent's statement of the facts (page 8) omits to mention that the Eastern Glade, after stopping her engines at 5:34, did not sound her two-blast signal until a minute and a half or two minutes later; El Isleo did not answer, according to the Eastern Glade's witnesses, for about two minutes (El Isleo's master first testified, before the inspectors, that it was no more than a minute; on the trial it was no more than twenty seconds: R. 37); when El Isleo answered, with the danger signal and one blast, the Eastern Glade reversed promptly (R. 148). The time logged was 5:38, two minutes before the collision.

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* The comma after the word "stopped" seems to have been omitted by inadvertence from the reprints of Rule VII after the edition of the Pilot Rules dated July 25, 1911. No intended change in the rule was noted, however, and the absence of the comma from the edition of May 1, 1912, and subsequent editions was evidently an oversight. The same language, with the original punctuation, has continued to be used in the Pilot Rules for the Great Lakes, Rule X of which corresponds with Rule VII of the Inland Pilot Rules. Both are quoted in our original brief, pages 15 and 17. Moreover, it is plain that Rules II and VII would lose all purpose, and be worse than useless, unless it were intended that both vessels stop. If the matter were left optional with the pilot of the privileged vessel, there would be no point whatever in those rules. See the opinion in *The Fulton*, our original brief, p. 9.

There is no evidence to support respondent's irrelevant assertion (page 9) that there may have been something the matter with the Eastern Glade's steering gear. The steering gear was proved to have been tested before leaving the dock (R. 112). It was in good order: master, R. 155; chief engineer, R. 108; assistant engineer, R. 142, steersman, R. 104.

Respondent's suggestion, pages 17-24, that Rule II of the Supervising Inspectors applies only to head-and-head situations, is untenable. The decisions referred to by respondent on that point (discussed in the appendix hereto) were rendered when the Inspectors' prohibition of cross-signals was limited to head-and-head situations; the present prohibition is not so limited. The quotation from *The Delaware*, page 18, also refers to earlier regulations that are inapplicable here.

On page 23 of its brief respondent refers to Rule III of the Supervising Inspectors. That rule is not involved in this case because the vessels did exchange signals.

Respondent's belated contention,* put forward between pages 19 and 29, "that irrespective of the original proposal by the Eastern Glade an agreement had been reached whereby the Eastern Glade would hold back and grant El Isleo the privilege to which she was entitled," is patently unsubstantial.

If the Eastern Glade sounded the backing signal of three blasts, as her master testified, the signal was no assurance

*While the statement in our former brief, page 7, is literally correct that there was no contention in El Isleo's pleadings that the Eastern Glade sounded four blasts and one blast, we had inexcusably overlooked (as is pointed out in the second footnote on page 29 of respondent's brief) that the words do appear, irresponsively, among the "admissions" in her answer (R. 4, Article Third); but they do not appear among her allegations of the "true facts" (R. 5, Seventh) nor is there any mention of the matter in her libel (R. 10-12). It remains that respondent had no basis for contending, and did not contend in its pleadings, that there was a one-whistle passing agreement.

that the Eastern Glade actually would succeed in keeping out of the way.

If, on the other hand, El Isleo's testimony be credited, that the Eastern Glade blew four blasts followed by one blast, *those whistles necessarily included the danger signal.* Only a single blast of the whistle unaccompanied by any other signal could be said to constitute the assurance that El Isleo now contends she was justified in relying upon. That the vessels exchanged no "signals for passing with safety" is proved by the event, as well as by the direct testimony of El Isleo's pilot:

> "Q. As the vessels came on, did you at any time think there was danger of collision?
> A. I thought so all the time after the danger signals were exchanged.
> Q. That is, after each vessel blew danger signals?
> A. Yes." (R. 201.)
>
> * * * * * * *
>
> "Q. If she continued on and you continued on, a collision was going to happen?
> A. Exactly.
> Q. You realized that as soon as she blew the two whistles?
> A. Yes.
> Q. And you blew the alarm whistle?
> A. That is right, sir." (cross-examination, R. 217.)

Between pages 29 and 32 respondent argues that El Isleo's errors, if any, were *in extremis,* and that the faults of the Eastern Glade were glaring and alone sufficient to account for the disaster, so that any slight doubt as to the propriety of El Isleo's navigation should be resolved in her favor under the doctrine of *City of New York,* 147 U. S. 72. The fallacy of that argument here is that El Isleo's infractions of Rules II and VII *were not in extremis.* The asserted doctrine has no application in favor of a vessel that has committed a positive breach of the collision regulations, the effects of which are, *or even may possibly be,* persistent down to the time of collision (Page 2, *supra; The Dexter,* 23 Wall. 69, 76).

The statement on page 32, and the intimation elsewhere in the respondent's brief, that "the master of El Isleo decided that the best chance of avoiding collision was in holding her course and speed," is opposed to the testimony of her witnesses (master, R. 23, 24, 37; pilot R. 219, 232), and is without support in the findings of the courts below (our original brief, pp. 6 and 7).

Respondent's quotation on page 34 from the opinion of the court below does not disclose that the court's observation was made with reference to the failure of El Isleo's master to have a pilot's license for the waters in which the collision occurred, and not with respect to the subject under consideration in this court (R. 284).

The reproduction of a chart attached to respondent's brief as appendix B, is not a copy of any exhibit in the case, and is needlessly confusing because it incompletely combines two exhibits, one showing the positions as marked by El Isleo's pilot and the other showing the positions indicated by the master of the Eastern Glade. Respondent's evident purpose is to make it appear, contrary to the finding below (R. 282), that the Eastern Glade did not stop her engines until after she had sounded her two-whistle signal. Thus position S, marked by her master as the point at which he stopped his engines (R. 149, Exhibit 9), is indicated as a later position than B-1, the place where El Isleo's pilot says the Eastern Glade was when she sounded her two blasts (R. 201). Respondent omits to show the position marked by the master of the Eastern Glade as the point at which he sounded two blasts, a position between S and Y, and does not mention that according to the Eastern Glade's bridge officers their two-blast signal was sounded a minute or two minutes *after* the Eastern Glade had stopped her engines (R. 148, 123).

Respectfully submitted,

JOHN C. CRAWLEY
EARLE FARWELL
For the Petitioner.

Appendix.

Ada, The Sappho, 1 Asp. M. C. 475. A case of collision between two steamers approaching a pilot station on crossing courses; there was no signal by either vessel.

The Albano, 1907 A. C. 193: There were no signals before one vessel sounded backing whistles *in extremis.*

The Ashbourne, (C. C. A. 2d) 181 Fed. 815 involved a collision between the respective tows of tugs meeting head and head, one failing to navigate in accordance with their timely exchange of one-blast signals.

In *The Ashley,* (C. C. A. 2d) 221 Fed. 423 the inspectors' rules applicable were those shown in the edition of May 1, 1912. Without discussion the court held that the preferred vessel could not be compelled to give way to a signal of two blasts, but "had a right to insist upon her privilege under the inland rules by answering with one".

Atlas Transportation Co. v. *Lee Line Steamers,* (C. C. A. 8th) 235 Fed. 492, involved an overtaking situation in the Mississippi River, after signals had been exchanged.

In *Belden v. Chase,* 150 U. S. 674, cited on page 24 of respondent's brief this court referred to the inspectors' rules as follows, at 698:

> "In addition to the rules for preventing collisions, prescribed by section 4233, it was provided by section 4412 that 'the board of supervising inspectors shall establish such regulations to be observed by all steam-vessels in passing each other, as they shall from time to time deem necessary for safety.' The rules laid down by the latter as thus authorized have the force of statutory enactment, and their construction, (when put in evidence as they were in this case,) as well as that of the rules under section 4233, is for the court, whose duty it is to apply them as matter of law upon the facts of a given case. They are not mere prudential regulations, but binding enactments, obligatory from the time that the necessity for precaution begins, and continuing so long as the means and opportunity to avoid the danger remains. *The Dexter,* 23 Wall. 69. Obviously they must be rigorously en-

forced in order to attain the object for which they were framed, which could not be secured if the masters of vessels were permitted to indulge their discretion in respect of obeying or departing from them."

The Blue Jacket, 144 U. S. 371, involved a collision between a sailing vessel and a steam tug. When the former changed her course the tug was *in extremis* and was excused for not reversing.

In *The Boston*, (C. C. A. 2d) 277 Fed. 36, the preferred vessel sounded a timely signal of one blast, and the burdened vessel, about 40 seconds before collision, and while approaching at top speed, crossed the other's signal with two blasts. The vessels were then *in extremis*.

In *The Boston Socony*, (C. C. A. 2d) 63 F. (2d) 246, "No signal was given by either vessel until just prior to collision, when each sounded an alarm and reversed. The collision could not then be averted * * *." (page 247, left.)

In *L. Boyers Sons Co.* v. *United States*, (C. C. A. 2d) 195 Fed. 490, it was found that on two occasions the privileged vessel had sounded a timely signal of one blast, the second of which was crossed by two blasts. Without specific reference to the inspectors' rules the court simply said that: "A privileged vessel is entitled to assume that, although the burdened vessel may at first propose to exchange rights of way, it will, if such proposal be rejected, conform to the rules of navigation." There was no discussion of the point here involved.

In *The Breakwater*, 155 U. S. 252, the burdened vessel inexcusably failed to navigate in accordance with the timely passing agreement.

Of *The Britannia*, 153 U. S. 130, mentioned on page 11 of our original brief, Mr. Justice Brown wrote in *The Albert Dumois*, 177 U. S. 240, at 254:

"In the case of *The Britannia*, the decision of the court that of two crossing steamers the preferred vessel should have kept her course and speed, was

put upon the ground that the course of the Britannia, the obligated vessel, was precisely what might have been anticipated, and did not warrant the Beaconsfield, the preferred vessel, in disregarding the injunctions of the twenty-third rule, which required her to keep her course. It was intimated that a different conclusion might have been reached if it had appeared that the Britannia was herself violating a rule of navigation. Now, as it appears from the testimony of the Argo's crew that they not only heard the signal of two whistles from the Dumois, but saw her turn under her starboard wheel, and exhibit her green light when she should have ported, they were at once apprised of the fact that she was violating a rule of navigation, and that prompt action was required to avoid a collision."

The Chatham, (C. C. A. 4th) 52 Fed. 396, was a case of a collision between a steam vessel and a schooner.

The Chicago, (C. C. A. 2d) 125 Fed. 712, illustrates the point involved in the present case. The court there said:

> "We are of the opinion that it was not fault on the part of the Augusta to hold her course and speed so long as [the possibility of the Chicago's keeping out of the way] existed, *in the absence of some definite intimation by signal* or action that the Chicago was going to fail in her duty. That notification came in the two-blast whistle and the increase of speed. The Augusta did not hear the signal, but, apparently at the same time it was blown, stopped her engines." (Our italics.)

By that time the vessels were *in extremis.* Certain of the inspectors' rules in force at that time (1899) are quoted on page 714 of the report. They were not in their present form.

The City of Augusta, (C. C. A. 1st) 80 Fed. 297, was a case of collision between a steam vessel and a schooner.

In *The City of New York,* 147 U. S. 72, the asserted contributory fault on the part of a sailing vessel was a change of course made *in extremis.*

The Columbia, (C. C. A. 9th) 109 Fed. 660, was a case of collision between a ship and a barque, both in tow of a steam tug.

In *The Columbia,* (C. C. A. 2d) 205 Fed. 898, a ferryboat came out of her slip with such impetus as to strike a steamer making a landing at a pier a short distance above the ferry slip.

In *Commonwealth & Dominion Line Ltd.,* v. *United States,* (C. C. A. 2d) 20 F. (2d) 729, the trial court found that the privileged vessel had sounded four separate signals, each of one blast, to the last of which the burdened vessel answered with two blasts, and that through inattention on the part of the burdened vessel the presence of the privileged vessel had not been noted until too late. When the last mentioned signal was given it was at best problematical whether collision could have been avoided.

In *The Cranford,* (C. C. A. 2d), 27 F. (2d) 710, the privileged vessel sounded one blast, to which the burdened vessel answered with two; the privileged vessel sounded the alarm and one blast and kept on; the burdened vessel replied with two blasts and an alarm, at which the privileged vessel reversed only a minute before the collision. The inspectors' rules were not mentioned by the court.

In *The Cygnus,* (C. C. A. 2d) 142 Fed. 85, it was pointed out that the inspectors' prohibition of cross-signals, although then restricted to cases of vessels meeting end-on, had induced a belief among some pilots that by giving the first signal they could relieve themselves of the burden of keeping out of the way. There was no mention of any requirement by the supervising inspectors that both vessels stop.

The Delaware, 161 U. S. 459, was discussed on p. 10 of our original brief.

In *The Elizabeth* (C. C. A. 2d), 197 Fed. 160, the *privileged* vessel sounded a two-blast signal, which was not heard, and later a second two-blast signal which was heard by the burdened vessel, but which the latter did not answer. On the authority of *The Montauk,* discussed

below, p. 15, the court excused the burdened vessel for her failure to answer signals, and held the privileged vessel solely at fault.

In *The Flemington*, (C. C. A. 2d) 204 Fed. 980, it appears only that a tug was held at fault for backing from her berth into the tow of a passing tug.

In *The Florence*, (D. C.) 68 Fed. 940; affirmed without opinion (C. C. A. 2d) 89 Fed. 1015, a steamer leaving her berth was held solely at fault for collision with a hawser tow after the steamer had sounded two-blasts, which the towing tug did not hear, and after the tug had sounded one blast, which the steamer did not hear, followed by another two blasts from the steamer, to which the tug responded with a single blast not heard by the steamer.

Fort St. George (C. C. A. 2d) 27 F. (2d) 788. Collision between the Olympic, backing into the North River from her berth. No signals were sounded, and the Olympic was *in extremis* before she had warning that the other vessel would not keep out of the way.

In *The Fred B. Dalzell, Jr.*, (C. C. A. 2d) 45 F. (2d) 580, the privileged vessel sounded one blast, which the burdened vessel answered with two blasts; whereupon the privileged vessel sounded the alarm and reversed her engines. In holding the burdened vessel solely at fault, the court pointed out that her two-blast signal, notice that she was violating the starboard hand rule, was sounded too late to permit the privileged vessel to avoid collision.

The Fulton, 54 F. (2d) 467, is discussed in our original brief, p. 8.

The George S. Shultz, see *The Nereus, infra.*
The Greenpoint, see *The Nereus, infra.*

The Haida, (D. C.) 191 Fed. 623, affirmed on opinion below (C. C. A. 2d) 196 Fed. 1005, contains a discussion by Judge Learned Hand of the opinion in *The Montauk, infra*, p. 15. Judge Hand considered that so much of that

opinion as nullified the inspectors' requirement of an answering signal was obiter, but that the subject discussed was not open for him. He stated his understanding of the decision to be that the inspectors could not require a privileged vessel to answer a signal, let alone require her to sound one indicating her intention to hold her course and speed.

The Hallgrim-Havre Maru, (C. C. A. 2d) 20 F. (2d) 720, involved the International Rules, and the vessels had repeatedly exchanged two blast signals. One failed to navigate in accordance with them.

The Haven Belle, (C. C. A. 4th) 85 F. (2d) 939, it was held that the privileged vessel was not at fault for having mistaken the burdened vessel's two-blast signal, sounded in a gale, for a one-blast signal, which she answered with one blast. Excusing the failure properly to hear the two-blast signal, the court said that the master of the preferred vessel "had no other reason to think that the [burdened vessel] would attempt to cross her bow."

In *The John H. Starin,* (D. C.) 145 Fed. 723; (C. C. A. 2d) 162 Fed. 146, the collision occurred in 1905. Although the inspectors' rules had been amended in 1899, they were substantially in the same form as those considered in *The John King, infra.* There was no prohibition of cross-signals except in cases of vessels meeting end-on. The only point argued or discussed with respect to the rules was whether they undertook to require the privileged vessel to *assent* to a two-blast proposal.

It is evident from the opinion in *The John King,* (C. C. A. 2d) 49 Fed. 469, that the inspectors' rules applicable to that case (1888) were regarded as requiring the privileged vessel to *assent* to a two-blast signal, and so to be in conflict with what was then Rule 23 of R. S. § 4233. There was no mention of the consideration that underlies the inspectors' rules in their present form, which do not purport to require assent but simply require that the rejection shall be accomplished by sounding the alarm signal and stopping instead of crossing the signal and going on.

The bare facts of that case are a striking illustration of the practicability of the present rules.

In *The Lexington*, (C. C. A. 2d), 275 Fed. 279, study of the opinion discloses that the vessels were *in extremis* when the burdened vessel sounded the first signal of two blasts, at which the privileged vessel sounded two blasts and reversed.

The Maggie J. Smith, 123 U. S. 349, had reference to a situation of extreme danger brought about solely by the fault of one vessel; the other, having been blameless theretofore, was not held at fault for an error *in extremis*.

The Manx Admiral, 60 Ll. L.L.R. 11, there was no signal until the preferred vessel sounded one blast *in extremis*.

In *The Montauk* (C. C. A. 2d), 180 Fed. 697, the applicable rules (page 698) were those in force on April 22, 1907; they were not in their present form, but the court's construction of them was, to say the least, not the only construction of which they would seem to have been susceptible. The court said, however, that since the statutory rules prescribed only that answering signals must be sounded by vessels in head-and-head situations, the inspectors were powerless to require the privileged vessel to answer any signal in a crossing situation. Having interpreted the inspectors' provision for signals as being inapplicable to the privileged vessel in a crossing situation, the court concluded that the inspectors intended that the privileged vessel, on receiving an "injudicious" two-blast proposal, should, if the vessels had approached within half a mile of each other, slow to bare steerage way *without sounding any signal at all*. There was, we submit, no occasion for so interpreting the inspectors' rules in force at that time, but even if the court was correct in its interpretation of those rules it does not follow that the present rules also should be condemned.

Minnesota S. S. Co. v. *Lehigh Valley Trans. Co.*, (C. C. A. 6th), 129 Fed. 22, was a case of one vessel meeting two others that were running abreast.

The Munrio, (N. D. Cal.) 11 F. (2d) 900, was a case of collision at sea in fog. A vessel was held solely at fault for immoderate speed and for failing to stop her engines on hearing the first fog signal, seventeen minutes before the other vessel hove in sight.

The Nacoochee, 137 U. S. 330, was a collision in fog between a schooner and a steamer, the latter being held solely at fault for immoderate speed. The schooner was exonerated, in respect of an asserted error *in extremis.*

The Nereus, (D. C.) 23 Fed. 448, and *The Greenpoint,* (D. C.) 31 Fed. 231, the former characterized by the respondent as a "leading case," have been modified if not overruled on the point discussed in the quotations appearing in respondent's brief, pp. 13 and 16. The old notion, indicated by those quotations, that the privileged vessel should maintain her course and speed after assenting to a two-blast proposal, was overthrown in *The George S. Shultz,* (C. C. A. 2d) 84 Fed. 508. In *The Newburg,* (C. C. A. 2d) 273 Fed. 436, it was distinctly held that no matter which vessel made the proposal, "The situation, at least in this circuit, after the agreement, is one of special circumstances."

The New York, 175 U. S. 187, at page 205:

> "But the fact, that a steamer is entitled to hold her course does not excuse her from inattention to signals, from answering where an answer is required, or from adopting such precautions as may be necessary to prevent a collision, in case there be a distinct indication that the obligated steamer is about to fail in her duty. As was said in the case of *The Sunnyside,* 91 U. S. 208, 222: 'Cases arise in navigation where a stubborn adherence to a general rule is a culpable fault, for the reason that every navigator ought to know that rules of navigation are ordained not to promote collisions, but to save life and property by preventing such disasters.' "

Nordpol-Condor, (C.C.A. 2d), 84 F. (2d) 3, involved navigation under the International Rules, off the coast of South America.

"Immediately prior to the collision, the [burdened vessel], without warning or signal, suddenly turned to the westward and veered sharply across the course of the [privileged vessel]."

The latter reversed, but the vessels were already *in extremis*.

The Norfolk, (D. C. Md.) 297 Fed. 251, embodies the thought that rule II of the inspectors, should be construed as forbidding a cross-signal only where the vessel first signaling has indicated her purpose to comply with the rules (page 255). Both vessels were held at fault, the privileged vessel for stopping her engines *contrary* to her cross-signal.

The Oregon, 158 U. S. 186, was a case of collision between a steamer and a anchored vessel, the latter guilty of no breach of regulations. "It was a case of action *in extremis* • • • and the judgment of a competent sailor *in extremis* cannot be impugned." (page 204.)

The Pacific, (C. C. A. 3rd) 154 Fed. 943, was a case of collision between a steamer and an anchored dredge to which a tug was attached.

The Pawnee, (S.D.N.Y.) 168 Fed. 371, contains an interesting historical resumé by Judge Adams, who had been the proctor for the successful appellant in the case of *The John King*, (C.C.A. 2d), 49 Fed. 469, 470, and after his appointment to the bench had decided the case of *The John H. Starin*, 145 Fed. 723, affirmed, (C.C.A. 2d), 162 Fed. 146. Judge Adams' discussion shows that the old rules of the supervising inspectors were regarded in the second circuit as requiring the privileged vessel to give up her right of way upon the demand of the burdened vessel. With some hesitation Judge Adams concluded that Rule IX, approved February 25, 1907, was subject to the same objection, and in conflict with the statutory rule, although the facts disclose that the point was not actually involved: the preferred vessel gave the first signal, of one blast; later the burdened vessel blew a signal of two blasts,

whereupon the preferred vessel immediately stopped and reversed, in the jaws of collision.

The Persian, (C.C.A. 2d) 224 Fed. 441, was a case of collision in dense fog and the asserted contributory fault of one vessel was held an error *in extremis*.

The Piankatank, (C.C.A. 4th) 87 F. (2d) 806, involved a collision between a vessel that had backed out of her slip and started full speed ahead while another backed out of a neighboring slip with the intention of proceeding astern across the course of the first. The opinion recites: "Both vessels were parked bow in." (p. 807, right.)

In *The Pocomoke*, (E. D. Va.) 150 Fed. 193, there were no signals by either vessel, and the privileged vessel had no indication of danger until collision became inevitable.

The Ponce, (E. D. N. Y.) 116 Fed. 55, was a case of collision between passenger vessels at a yacht race, one vessel being at rest.

Reading Co. v. *Sabine Transportation Co.*, (C. C. A. 3rd) 91 F. (2d) 112. The decision was not that inspectors' present rule III is invalid, but that, as the court said:

> "We think that rule III applies and is intended to apply only where vessels are in a position of danger in respect to one another, and we so hold."

In the present case it is unnecessary to consider the correctness of that decision.

The San Simeon, (C. C. A. 2d) 63 F. (2d) 798, and *Merritt, Chapman & Scott Corporation* v. *Texas Co.*, et al., (C. C. A. 2d) 98 F. (2d) 719, are cited on page 38 of the respondent's brief upon the interpretation of Article 18, Rule III, prescribing the danger signal.

In the last mentioned case the court said of the statutory signal, page 721,

> "But it has been universally interpreted as applying to cases where the master believes that safety requires a change of navigation, and by far the greater number of occasions of its use are just of that sort."

In *The Scranton*, (C. C. A. 2d), 221 Fed. 609, the principal question considered was whether there had been, as the burdened vessel contended, a two-blast passing agreement. It was found that there was no agreement and that the vessels were *in extremis* before the privileged vessel received an indication that the other would not keep out of the way.

The Thielbek, (C. C. A. 9th) 241 Fed. 209, involved a collision between a steamer and a bark in tow of a tug. The steamer after two-blast passing signals had been exchanged, failed to navigate in accordance with the agreement but reversed her engines, without signalling, and rendered collision unavoidable.

In *The Transfer No. 15*, (C. C. A. 2d) 145 Fed. 503, the inspectors' prohibition of cross-signals was that contained in what was then Rule III, as amended January 25, 1899, and by its terms was restricted to vessels approaching from opposite directions and did not cover vessels on crossing courses. Such discussion as there was of the subject indicates only that the court considered it beyond the power of the supervising inspectors to require the privileged vessel to *assent* to a two-blast proposal.

The Umbria, 166 U. S. 404, was a case of collision in fog. A majority of this court concluded that one vessel was not at fault, and the other members of this court concluded that if fault existed it did not contribute to the collision.

The Victory & The Plymothian, 168 U. S. 410, was a head and head situation, in which, however, it appears that *The Plymothian* immediately reversed on hearing a two-blast signal and sounded danger signals (p. 422).

In *The West Point*, (C. C. A. 2d) 85 F. (2d) 63, the privileged vessel sounded one-blast signals and maintained her course and speed. The burdened vessel "at no time sounded any signals except an alarm, blown just as the collision occurred".

Wilson v. *Pacific Steamship Company*, 276 U. S. 454, was discussed on p. 11 of our original brief. It may be mentioned that the "note" appended to Article 21 of the international rules, considered in that case, was added by the Act of May 28, 1894, ch. 83, (33 U. S. Code § 106), and that it was not made a part of Article 21 of the inland rules adopted in 1897 (33 U. S. Code § 206).